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**UNITED STATES DISTRICT COURTS
DISTRICT OF OREGON
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MMS CO., LTD., and GRUS LINE)
 SHIPPING, SA,)
)
 Defendants.)

NO. CR 04- 37 MO (D. Or.)
NO. _____ (C.D. Cal.)
NO. _____ (N.D. Cal.)

PLEA AGREEMENT

The United States of America, by and through Karin J. Immergut, United States Attorney for the District of Oregon, Robert Ross and Scott Kerin, Assistant United States Attorneys for this district; Debra W. Yang, United States Attorney for the Central District of California, and William W. Carter and Dorothy C. Kim, Assistant United States Attorneys for this district; Kevin V. Ryan, United States Attorney for the Northern District of California, and Maureen Bessette, Assistant United States Attorney for this district (collectively, the "Districts"); and Defendants MMS Co., Ltd. ("MMS"), and Grus Line Shipping, SA ("Grus Line") (collectively "defendants"), by and through their attorneys Lawrence Matasar, and M. Christie Helmer, hereby enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11:

1. Waiver of Indictment in the Central and Northern Districts of California. Defendant MMS, having been advised of the right to be charged by Indictment in the Central and Northern Districts of California, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorneys by Informations filed in those districts.

1 2. Waiver of Venue and Transfer To District of Oregon. Defendant MMS agrees to
2 waive venue on the Informations and consents to the transfer of the Informations to the District
3 of Oregon under Federal Rules of Criminal Procedure 20 for entry of plea and sentencing.

4 3. The Charges. Defendant MMS, by and through its authorized representatives, having
5 been advised of the right to have this matter tried before a jury, agrees to waive that right and
6 enter pleas of guilty to the following Counts contained in the Indictment filed in the District of
7 Oregon and the Informations filed in the Central and Northern Districts of California. By
8 entering these pleas of guilty, MMS hereby waives all objections to the form of the charging
9 documents.

10 a. Count 1 of the Indictment and Count 1 of the Informations, charging
11 MMS, by and through the actions of the M/V Spring Drake's crew members, with knowingly
12 failing to maintain an Oil Record Book in which all disposals of oil residue and all overboard
13 discharges and disposals of bilge water were fully recorded, in violation of Title 33, United
14 States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Sections 151.25(a), (d)
15 and (h).

16 b. Count 2 of the Indictment, charging MMS, by and through the actions of
17 the motor vessel ("M/V") Spring Drake's crew members, with knowingly concealing, covering
18 up, falsifying and making a false entry in a record, document and tangible object, with the intent
19 to impede, obstruct and influence the investigation and proper administration of a matter within
20 the jurisdiction of the United States Coast Guard, and in relation and contemplation of such a
21 matter, namely a United States Coast Guard MARPOL inspection of the M/V Spring Drake, in
22 violation of Title 18, United States Code, Sections 2 and 1519;

23 4. Elements of the Offenses.

24 a. Count 2 of the Indictment. The elements of the offense of obstruction of
25 an investigation or proper administration of any matter within the jurisdiction of any department
26 or agency of the United States as charged in Count 2 of the Indictment, in violation of Title 18,
27 United States Code, Sections 2 and 1519, are as follows:
28

1 (1) Defendant, by and through the actions of its agents and/or employees,
2 concealed, covered up, falsified or made a false entry in any record, document or
3 tangible object;

4 (2) Defendant, by and through the actions of its agents and/or employees,
5 acted knowingly, that is, it was aware of the fact that the record or document was
6 falsified, or that tangible object(s) were concealed or covered up;

7 (3) Defendant, by and through the actions of its agents and/or employees,
8 acted with the intent to impede, obstruct or influence the investigation or proper
9 administration of a matter within the jurisdiction of a department or agency of the
10 United States, or in relation to or in contemplation of any such matter or case.

11 b. Count 1 of the Indictment and Count 1 of the Informations. To establish
12 liability for the charged offense of violating the Act to Prevent Pollution from Ships as charged
13 in Count 1 of the Indictment and Count 1 of the Informations, in violation of Title 33, United
14 States Code, Sections 1308(a) and Title 33, Code of Federal Regulations, Sections 151.25(a), (d)
15 and (h), the Districts must prove that the Defendant MMS, by and through the actions of its
16 agents and/or employees, knowingly failed to maintain an Oil Record Book in which all
17 disposals of oil residue and all overboard discharges and disposals of bilge water were fully
18 recorded.

19 Under well-established principles of corporate liability and *respondet superior*, as these
20 principles apply in this case, the corporate defendant MMS is liable for the actions of its agents
21 and employees. *New York Central and Hudson River R.R. v. United States*, 212 U.S. 481, 495
22 (1909); *United States v. Beusch*, 596 F.2d 871, 877 (9th Cir. 1979); *United States v. Hilton Hotels*
23 *Corporation*, 467 F.2d 1000, 1004-07 (9th Cir. 1972).

24 5. The Penalties. MMS understands that the statutory penalties applicable to a corporate
25 defendant for the offenses of (a) obstructing an agency matter in violation of Title 18, United
26 States Code, Sections 2 and 1519, as charged in Count 2 of the Indictment; (b) failing to
27 maintain an accurate Oil Record Book in violation of Title 33, United States Code, Section
28 1908(a) and Title 33, Code of Federal Regulations, Sections 151.25(a), (d) and (h), as charged in
Count 1 of the Indictment and Count 1 of the Informations; are as follows: a maximum fine of
up to Five Hundred Thousand Dollars (\$500,000) per count, a term of probation of up to five (5)
years, and a special assessment of Four Hundred Dollars (\$400) per count.

1 MMS further understands that, as to each count, it may be fined under the Alternative
2 Fines Provision set forth in Title 18, United States Code, Section 3571(d), which provides: “If
3 any person derives pecuniary gain from the offense, or if the offense results in a pecuniary loss to
4 a person other than the defendant, the defendant may be fined not more than the greater of twice
5 the gross gain or twice the gross loss unless imposition of a fine under this subsection would
6 unduly complicate or prolong the sentencing process.”

7 MMS agrees that should the Court accept the terms of this Plea Agreement, the monetary
8 penalty imposed by the Court consistent with this Agreement, including the special assessments
9 and the fines, shall be paid on the date of sentencing.

10 6. Dismissal of Count 3. Upon imposition of sentence, the government will move to
11 dismiss Count 3 of the indictment against MMS.

12 7. Rights Waived by Pleading Guilty. MMS understands that, by pleading guilty, it
13 knowingly and voluntarily waives the following rights:

- 14 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 15 b. The right to a speedy and public trial before an impartial jury;
- 16 c. The right to the effective assistance of counsel at trial;
- 17 d. The right to be presumed innocent until guilt has been established
18 at trial, beyond a reasonable doubt;
- 19 e. The right to confront and cross-examine witnesses against them at trial;
- 20 f. The right to compel or subpoena witnesses to appear on their behalf at
21 trial; and
- 22 g. The right to appeal a finding of guilt or any pretrial rulings.

23 8. Applicability of Sentencing Guidelines. MMS understands and acknowledges that the
24 United States Sentencing Guidelines promulgated by the United States Sentencing Commission
25 are applicable to the sentencing in this case, except that pursuant to USSG §§ 8C2.1, Chapter 8
26 of the United States Sentencing Guidelines is not applicable to the determination of the
27 appropriate fine in this case.

28 9. Sentencing Agreement. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),
the Districts and MMS agree that the sentence to be imposed by the Court shall be as follows:

1 a. Fine. MMS shall pay an amount of Five Hundred Thousand Dollars
2 (\$500,000) on each of the four (4) counts, due and payable in accordance with paragraph 5
3 above. This amount will be deemed to satisfy any and all criminal fines, including any allocated
4 community service payments ordered by the Court as part of MMS's sentence.

5 b. Mandatory Special Assessment. MMS shall pay a special assessment of
6 Four Hundred Dollars (\$400) on each of the four (4) counts, due and payable in accordance with
7 paragraph 4 above.

8 c. Probation. MMS will be placed on organizational probation for a period
9 of four (4) years pursuant to USSG §§ 8D1.1 and 8D1.2. The terms of probation shall be:

10 (1) No Further Violations. MMS agrees that it shall commit no further
11 violations of federal, state or local law, including those laws and regulations for which primary
12 enforcement has been delegated to state authorities, and shall conduct all its operations in
13 accordance with the MARPOL Protocol.

14 (2) Environmental Management System/Compliance Plan.
15 Consistent with the sentencing policies set forth in USSG § 8D1.4, MMS agrees to develop,
16 adopt, implement and fund the Environmental Management System/Compliance Plan ("EMS")
17 attached hereto as Exhibit A.

18 The EMS will establish that: all environmental and related operational risks have been
19 identified; such risks are being appropriately managed and potential risks are being avoided; all
20 international, federal, state and local laws, regulations, and environmental permit requirements
21 are being adhered to; appropriate policies, programs and procedures are in place; organizational
22 responsibilities are clearly defined, understood and implemented; environmental quality control
23 assurance and verification systems are in place, as determined by appropriate self-policing and
24 third-party audits; company operations, including contractor operations and on-site service
25 provider operations, do not present actual risks to the environment. MMS shall ensure that the
26 environmental compliance program is diligently enforced by its officers and managers.

27 MMS shall be responsible for all costs associated with the development, implementation,
28 maintenance and monitoring of the EMS.

1 MMS agrees that during the period of probation, and at all reasonable times and with as
2 reasonable prior notice by the Districts as practicable, they will provide the Districts with full
3 access to its vessels listed in the EMS, as well as all facilities, employees, and records that are
4 relevant to monitoring compliance with the terms and conditions of the EMS.

5 If MMS changes its name, the renamed company shall be obliged to meet all of the
6 obligations of MMS under this agreement. If MMS merges with another company through a
7 stock or asset purchase, the newly created or merged company shall be obliged to meet all of the
8 obligations of MMS under this agreement with regard to those vessels managed by MMS at the
9 date of the merger.

10 The parties recognize that during the term of probation, the number and identity of
11 vessels managed by MMS that call in the Districts may increase or decrease. Any vessel the
12 management of which is assumed by MMS and which calls in the United States shall be included
13 within the scope of its EMS. Any vessel removed from management by MMS or which stops
14 calling in the United States shall be excluded from the scope of its EMS.

15 d. Community Service. The parties understand and agree that the Districts
16 will petition the Court at or before the time of sentencing to apply a portion of MMS's settlement
17 amount identified in paragraph 9(a), above, to community service pursuant to USSG § 8B1.3 and
18 in furtherance of the sentencing principles provided in 18 U.S.C. § 3553(a), for the purpose of
19 funding one or more projects for the benefit, preservation, and restoration of the environment and
20 ecosystems in the waters of the United States in each of the Districts in Oregon and California.
21 MMS shall not oppose such a petition, including the amount allocated to the community service
22 projects.

23 10. Application of the Agreement. This Agreement shall bind MMS and such other
24 companies as may be included in paragraph 9, above, or the attached Exhibit A. MMS shall
25 provide the Districts and the United States Probation Office with immediate notice of any name
26 change, business reorganization, sale or divestiture impacting its ability to pay the fine or
27 affecting this Agreement and the EMS. MMS shall not engage in any action to seek to avoid the
28 obligations and conditions set forth in this Agreement.

1 11. Statement of Facts. The parties agree that the government would offer proof of the
2 following facts at trial and in support of MMS's guilty pleas. MMS admits that it is guilty of: (a)
3 Counts 1 and 2, as charged in the Indictment filed in the District of Oregon; (b) Count 1 in the
4 Informations filed in the Central and Northern Districts of California.

5 A. *Background*

6 a. Defendant MMS is a ship management company incorporated and headquartered in
7 Japan. Acting both directly and through its agents, the Defendant MMS manages twenty-eight
8 ocean going vessels, including bulk cargo ships that transport goods around the world.

9 b. One of the marine vessels the Defendant MMS operates and manages is the motor
10 vessel ("M/V") Spring Drake, a Panamanian flagged freight ship weighing 27,011 gross tons
11 owned by Grus Line Shipping SA. Over the last several years, the M/V Spring Drake has made a
12 number of port calls in the United States, including ports in the District of Oregon, the Northern
13 District of California, and the Central District of California.

14 c. The M/V Spring Drake typically operates with a crew of approximately twenty-three
15 (23) persons. Approximately ten (10) crew members of different rank work in the vessel's
16 engine room, including a chief engineer, a first engineer, a second engineer, a third engineer, an
17 electrician, a motorman, two oilers, a wiper, and an engine cadet. During the period relevant to
18 this Plea Agreement, the first engineer was primarily responsible for properly disposing of waste
19 oil that accumulated onboard the vessel and was responsible for operating the vessel's Oil Water
20 Separator ("OWS") and incinerator. The first engineer reported to the chief engineer who had
21 overall responsibility for engine room operations. The chief engineer reported directly to the
22 captain, who was responsible for all vessel operations.

23 d. Large ocean going vessels, like the M/V Spring Drake, produce waste oil as a result of
24 the operation of machinery in the engine room. Some of the waste oil, together with water and
25 other liquids, accumulates in the bottom or "bilges" of the vessel. This waste liquid typically
26 drains into the "bilge wells," small compartments set into the bottom of the engine room
27 compartment. The bilge waste is then collected and run through various processes designed to
28 separate the oil and other wastes from the water. These processes include settling tanks, an OWS
(also known as a Bilge Water Separator), and a pollution control device designed to remove or
separate out oil. After processing by the OWS, bilge water containing very small amounts of oil
may be legally discharged overboard. Oil removed from the bilge waste, along with other waste
oils from the ship, are stored in a sludge tank. Some ships burn the sludge in an incinerator or in
the vessel's auxiliary boiler. Oil-contaminated bilge waste and other waste oils, including
sludge, may also be off-loaded while the vessel is in port and properly disposed of onshore.

 e. Under the MARPOL Protocol, an international treaty implemented in the United States
by the "Act to Prevent Pollution from Ships" ("APPS"), 33 U.S.C. 1901, *et seq.*, a ship may not
discharge overboard oily waste with more than fifteen (15) parts per million ("ppm") of oil. The
MARPOL Protocol and the APPS require that each oil tanker of 150 gross tons or more, or non-
tanker vessels of more than 400 gross tons, maintain an "Oil Record Book" (also known as the
"ORB"). All transfers of oil, disposal of sludge and bilge water, and overboard discharges of
bilge water that have accumulated in machinery spaces and are thus contaminated with oil, must
be fully recorded in the ORB. 33 C.F.R. § 151.25(d). The captain of the ship must sign every
completed page of the ORB. 33 C.F.R. § 151.25(h). The ORB must be maintained onboard for
not less than three years and must be kept on board the vessel readily available at all reasonable
times.

1 f. The regulations authorize the U.S. Coast Guard to board and inspect all vessels in
2 United States ports to determine compliance with federal regulations and the MARPOL Protocol.
3 14 U.S.C. § 89, 33 C.F.R. § 151.25. The inspection typically includes an examination of the
4 ORB. The U.S. Coast Guard relies upon the accuracy of information contained in the ORB to
5 assist in assessing the vessel operator's compliance with all applicable rules and regulations.

6 *B. Factual Basis For Plea*

7 g. On about August 20, 2003, Chief Engineer Shashank Pendse came on board the M/V
8 Spring Drake. He soon learned that the engine room crew, under the orders of the prior Chief
9 Engineer Schawdhuri, had been discharging their oily waste and oil contaminated bilge water
10 overboard. This was done by use of a green hose that was connected to the standard shore
11 discharge connection on the deck of the vessel, which hose was draped over the side of the ship
12 and into the water. Both sludge and contaminated bilge water were discharged in this manner.
13 The hose was installed and the discharges were pumped overboard at night.

14 Chief Engineer Shashank Pendse ordered the crew to discontinue this practice because it
15 could be seen by other members of the ship's crew, and because it could leave a streak of oil
16 along the side of the ship, easily detected by inspectors. He ordered the crew to do the illegal
17 discharges through the overboard discharge valve of the Oil Water Separator (OWS). He was
18 told that there had been a "magic pipe" used in the past that connected the sludge pump to the
19 overboard discharge valve, but it had been misplaced. He ordered a crew member to construct a
20 new pipe that fit from the sludge pump to the overboard discharge valve, which was done. This
21 new pipe was unpainted. Later, the original misplaced pipe was found. It was painted green.

22 From then on, the crew would install the magic pipe after the ship left port and would
23 routinely discharge the ship's sludge and bilge water overboard. Before coming into port, the
24 pipe would be removed and hidden, and the original overboard piping from the OWS would be
25 reinstalled.

26 Chief Engineer Shashank Pendse would make entries in the oil record book showing that
27 the sludge was transferred to the waste oil service tank and burned in the incinerator and the bilge
28 water was processed through the OWS with the 15 ppm oil content meter operational before it
was discharged overboard. Chief Engineer Pendse admitted that all of these entries were false
and designed to cover up and conceal that the ship routinely discharged overboard its sludge
rather than burning it in the incinerator and also discharged its bilge water directly overboard
without treating it in the OWS.

Engineers in the the M/V Spring Drake, monitored the liquid levels in the various tanks
aboard the ship, including the bilge tanks and various other waste oil tanks, as a way of tracking
the safe operation of the ship and the safe management of its wastes. These "tank sounding logs"
must be accurate to accomplish these purposes. A comparison of the accurate tank sounding logs
to the ships ORB will usually reveal whether the ORB is false. Knowing this, Chief Engineer
Pendse kept the tank sounding log in the engine control room while the ship was en route, but
kept it in his private stateroom when the ship was in port and the engine room and its records
subject to inspection. To further impede any potential investigation by the United States Coast
Guard, Chief Engineer Pendse discontinued entering tank soundings in the log book in January
2004.

One crew member, Morales, had come on board the M/V Spring Drake in February of
2003. He reported that during the tenure of the previous chief engineer, they had discharged the
ship's oily wastes in the ocean. Also, he had sailed on the M/V Spring Drake two previous
times; once when it first was commissioned in 1999, and again in 2001. On the later voyage, he
said that the ship dumped its oily wastes overboard. Morales stated that he took the tank
soundings accurately and entered them in the tank sounding log book.

1 On or about July 1, 2003, the M/V Spring Drake entered San Francisco Bay in
2 California. While in port, the United States Coast Guard conducted a Port State Control
3 inspection, which included compliance with pollution prevention requirements. At the time of
4 the inspection, the ship had previously been discharging its oily wastes and untreated bilge water
5 into the ocean and the ship's ORB falsely recorded that the wastes had been burned in the ship's
6 incinerator and that the bilge water had been discharged through the ship's OWS with the 15 ppm
7 controls in operation. The crew of the ship had hidden any bypass pipes or hoses used for such
8 illegal discharges and did not reveal to the United States Coast Guard the existence of the hoses
9 and pipes and the false entries in the ORB.

6 On or about the January 3, 2004, the M/V Spring Drake entered the port of Long Beach,
7 California and remained there until its departure on January 22, 2004. Prior to this entry into
8 port, the ship's crew had removed and hid the bypass pipe used to make illegal discharges of oily
9 wastes and bilge water. The ship had ready for inspection its ORB which contained false entries
10 in that it failed to accurately record the transfers and dispositions of oily wastes and the disposal
11 and discharges of bilge water, in that it reported the oily wastes had been disposed of in the
12 ship's incinerator and the bilge water had been discharged through the ship's OWS while the 15
13 ppm controls were in operation, when in fact the oily wastes and untreated bilge water had been
14 discharged overboard using a hose or bypass pipe.

11 On or about January 26, 2004, the M/V Spring Drake entered the Port of Portland,
12 Oregon. Prior to entry, the ship's crew removed and hid the bypass pipe, and continued to hide
13 the second bypass pipe and hose. The chief engineer hid the tank sounding log in his stateroom.

13 On January 30, 2004, the United States Coast Guard in Portland, began conducting an
14 annual MARPOL inspection. The inspectors found oil on the valve stem of the overboard
15 discharge valve and inside the overboard valve. It also discovered that the ship's incinerator and
16 OWS were not functioning properly. The crew lied when questioned about the existence and use
17 of a bypass pipe to make illegal discharges of bilge and oily wastes. The chief engineer lied
18 about the existence and location of the tank sounding log book. Eventually, the chief engineer
19 Pendse voluntarily produced the tank sounding log book and voluntarily admitted that the tank
20 sounding log book would reveal that the ship had been illegally discharging its oily wastes and
21 bilge water using a "magic pipe". He admitted that he had falsified the ORB to cover up the
22 illegal discharges. Chief engineer Pendse produced the green bypass pipe, but hid from the
23 inspectors the existence of the second pipe and the hose. Later, after the United States Coast
24 Guard left the ship, members of the crew took the second bypass pipe and threw it overboard
25 into the Willamette River.

20 When the crew was informed that the Chief Engineer had admitted to the use of a bypass
21 pipe to illegally discharge wastes, the crew confirmed his story, including that the illegal use of
22 the bypass pipes and hose had occurred during the tenure of the prior the Chief Engineer during
23 the period February 2003 to August 2003. The crew also confirmed that the second bypass pipe
24 had been thrown overboard

23 h. By presenting a false ORB to the U.S. Coast Guard and concealing evidence of the use
24 of the bypass pipes and hose, the crew members' conduct influenced and impeded the U.S. Coast
25 Guard officials' inspection activities on board the M/V Spring Drake.

25 i. MMS, by and through the actions of the vessel's crew, is deemed to have vicariously
26 known that engine room crew members of the M/V Spring Drake altered, concealed, covered up,
27 falsified, and made false entries in a record, document and tangible object with the intent to
28 impede, obstruct and influence the investigation and proper administration of a U.S. Coast Guard
Port State Control MARPOL inspection, in that crew members: (a) removed and hid bypass
pipes and a hose used to discharge inadequately treated oily wastes overboard; (b) painted valve
fittings where the bypass pipe had been attached to the OWS system to make it appear that the
pipe had not been installed on the system; (c) presented and maintained a falsified ORB for
review by the Coast Guard, which failed to document the existence and use of the bypass pipe

1 and fittings to discharge inadequately treated oily wastes overboard; and (d) made false
2 statements, misrepresentations and omissions to the Coast Guard, and instructed engine room
3 crew members to make false statements, misrepresentations and omissions, about the existence
and use of the bypass pipe and fittings to discharge inadequately treated oily wastes overboard,
(e) hid the ship's tank sounding log book, and (f) threw one of the bypass pipes overboard.

4 j. MMS, by and through the actions of the vessel's crew, is deemed to have vicariously
5 known at the time the entries in the ORB were presented to the U.S. Coast Guard inspectors that
6 the entries were false and that, in truth and in fact, oily wastes were not properly treated, but were
7 discharged overboard into the ocean, without proper use of the ship's pollution prevention
equipment. MMS, by and through the actions of the vessel's crew, is deemed to have vicariously
known that these false entries and omissions were material to the enforcement and regulatory
duties of the U.S. Coast Guard.

8 k. MMS, by and through the actions of the vessel's crew, is also deemed to have
9 vicariously known that the crew of the M/V Spring Drake knowingly failed to maintain an ORB
10 for the M/V Spring Drake in which all disposals of oil residue and all overboard discharges and
disposal of bilge water were fully recorded.

11 12. Non-Prosecution of Additional Offenses. As part of this Plea Agreement and solely
12 because of the promises made by MMS in this Agreement, the Districts agree to dismiss the
13 remaining counts of the Indictment at the time of sentencing. The Districts further agree not to
14 prosecute MMS or Grus Line Shipping for any additional offenses before the date of this
15 agreement.

16 The Districts, immediately following entry of the Plea Agreement, shall discontinue their
17 investigations of MMS-operated vessels for conduct occurring before that date.

18 Nothing contained in this Agreement is meant to limit the rights and authority of the
19 United States to take further civil or administrative action against MMS, including but not
20 limited to, any listing and debarment proceedings to restrict rights and opportunities of MMS to
21 contract with or receive assistance, loans, and benefits from United States agencies. The parties
22 agree, however, that the United States Coast Guard will not pursue any civil penalties based upon
23 the subject matter of this Agreement. Upon payment of the fine and penalty assessments, the
24 agreements on security posted by MMS and Grus Line Shipping shall be canceled and the
25 original documents returned to counsel for MMS and Grus Line Shipping.

26 This Plea Agreement does not limit the right of MMS or the United States to speak at the
27 time of sentencing or in connection with the presentence investigation, consistent with the
28 provisions set forth in this Plea Agreement, to provide the Court or the United States Probation
Office with evidence of all relevant conduct committed by MMS. The parties agree that at

1 sentencing each will support the agreed disposition set forth in this Plea Agreement pursuant to
2 Federal Rule of Criminal Procedure 11(c)(1)(C).

3 13. Dismissal of Grus Line. At the time of sentencing, the government shall move to
4 dismiss with prejudice the charges against defendant Grus Line Shipping.

5 14. Corporate Authorization. MMS and Grus Line Shipping represent that they are
6 authorized to enter into this Agreement. On or before the date of entry and filing of the Plea
7 Agreement, defendants shall provide to the Districts and the Court a written statement under
8 corporate seal, certifying that they are authorized to enter into and comply with all of the
9 provisions of this Plea Agreement. The resolutions further shall authorize defendants' counsel to
10 take these actions, and that all corporate formalities for such authorizations have been observed.

11 15. Waiver of Appeal. MMS is aware that 18 U.S.C. § 3742 gives the right to appeal
12 the sentence to be imposed, and that other federal statutes give MMS the right to appeal other
13 aspects of the conviction. In consideration of the agreement of the Districts as set forth herein,
14 MMS knowingly and voluntarily agrees to waive the following rights:

15 a. The right, conferred by 18 U.S.C. § 3742, to appeal any sentence
16 imposed by the Court for the conviction of these offenses, except if the sentence imposed varies
17 from that agreed upon above under Rule 11(c)(1)(C);

18 b. The right to appeal any aspect of MMS' conviction, including any pre-
19 charge or pre-trial dispositions of motions or other issues; and

20 c. The right to bring any collateral attack against MMS' conviction or
21 sentence, except as it may relate to the effectiveness of its legal representation or as permitted
22 under subparagraph (a) above.

23 16. Voluntariness of the Plea. MMS acknowledges that it has entered into this Plea
24 Agreement freely and voluntarily and that it has been fully advised by counsel, and that no threats
25 or promises were made to induce it to enter into the guilty pleas called for by this Agreement.

26 17. Statute of Limitations. In the event that this Agreement is not accepted by the Court
27 for any reason, or MMS has breached any of the terms of this Plea Agreement, the statute of
28 limitations as to MMS shall be deemed to have been tolled from the date of the Plea Agreement
to: (1) 30 days following the date of non-acceptance of the Plea Agreement by the Court; or (2)

1 30 days following the date on which a breach of the Plea Agreement by MMS is discovered by
2 the Districts.

3 18. Completeness of Agreement. The Districts and defendants acknowledge that these
4 terms constitute the entire Plea Agreement between the parties. This Agreement only binds the
5 United States Attorney's Offices for the District of Oregon, the Central District of California and
6 the Northern District of California, and the United States Coast Guard in these Coast Guard
7 Districts. It does not bind any other United States Attorney's Office or any other office or agency
8 of the United States, or any state or local prosecutor, except as provided herein.

9
10 **FOR THE UNITED STATES:**

11 KARIN J. IMMERGUT
12 United States Attorney

13 _____
14 ROBERT B. ROSS
15 Assistant United States Attorney
16 District of Oregon

17 _____
18 SCOTT M. KERIN
19 Assistant United States Attorney
20 District of Oregon

21 DEBRA W. YANG
22 United States Attorney

23 _____
24 WILLIAM W. CARTER
25 DOROTHY C. KIM
26 Assistant United States Attorneys
27 Central District of California

28 KEVIN V. RYAN
United States Attorney

MAUREEN BESSETTE
Assistant United States Attorney
Northern District of California

FOR THE DEFENDANTS:

M. CHRISTIE HELMER
Counsel for Grus Line Shipping, SA

LAWRENCE MATASAR
Counsel for MMS Co., Ltd.

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